

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE
2003 DEC 29 A II: 14

GRAFTON AND UPTON RAILROAD
COMPANY,

Plaintiff,

v.

TOWN OF MILFORD,
Defendant.

U.S. DISTRICT COURT
DISTRICT OF MASS.

C.A. No.:

03 - 40291

MOTION FOR A PRELIMINARY INJUNCTION

The plaintiff, Grafton and Upton Railroad Company (the “GU”), hereby moves that this Honorable Court, pursuant to Fed. R. Civ. P. 65, grant it a preliminary injunction against the defendant, Town of Milford (the “Town”), enjoining the Town from taking any action to assert or enforce its *Zoning By-Laws* against the GU and/or the Boston Railway Terminal Corporation (the “BRT”) concerning railroad operations at the GU’s Milford Yard and/or to prohibit the Town from otherwise attempting to prevent, delay, obstruct or prohibit the GU/BRT’s use of the Yard for railroad operations.

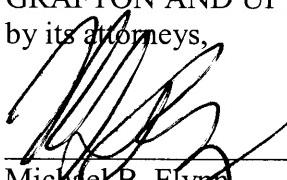
As grounds therefore, the GU states that the Town’s *Zoning By-Laws*, as well as any other state or local laws, statutes, ordinances or regulations, are preempted by federal law. In further support of this *Motion*, the GU refers to, and incorporates herein by this reference, the following:

- (1) *Verified Complaint for Declaratory Relief;*
- (2) *Memorandum of Law in Support of the Plaintiff’s Motion For Preliminary Injunction;*

- (3) *Affidavit of Bridget Lucey*, attached as Exhibit "1;"
- (4) the decision of the Surface Transportation Board ("STB") in the case of *Borough of Riverdale Petition for Declaratory Order, The New York Susquehanna and Western Railway Corporation*, STB Finance Docket No. 33466, 1999 WL 715272 (Sept. 9, 1999), a copy of which is attached as Exhibit "2."
- (5) the decision of the STB in the case of *Cities of Auburn and Kent, WA, Petition for Declaratory Order*, STB Finance Docket No. 33200, 1997 WL 362017 (July 1, 1997), a copy of which is attached as Exhibit "3."
- (6) the decision of the STB in the case of *Joint Petition for a Declaratory Order – Boston and Maine Corporation and Town of Ayer*, STB Finance Docket No. 33971, 2001 STB Lexis 435 (April 30, 2001), a copy of which is attached as Exhibit "4."
- (7) the decision of the STB in the case of *Hi Tech Trans, LLC – Petition For Declaratory Order*, STB Finance Docket No. 34192 (Sub-No.1) (Aug. 14, 2003), a copy of which is attached as Exhibit "5."
- (8) the decision of the STB in the case of *H&M International, Inc. – Petition for Declaratory Order*, STB Finance Docket No. 34277 (Nov. 10, 2003), a copy of which is attached as Exhibit "6."

WHEREFORE, for all of the above-stated reasons, and the reasons set forth in its *Memorandum of Law*, the Grafton and Upton Railroad Company requests that this Honorable Court issue a preliminary injunction enjoining the Town of Milford from taking any action to assert or enforce its *Zoning By-Laws* against the GU and/or the BRT concerning railroad operations at the GU's Milford Yard and/or to prohibit the Town from otherwise attempting to prevent, delay, obstruct or prohibit the GU/BRT's use of the Yard for railroad operations.

Respectfully submitted,
 GRAFTON AND UPTON RAILROAD CO.,
 by its attorneys.



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Dated: 12/29/03

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